

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In The Matter of

Omnibus Budget Reconciliation Act of 1993)
Implementation of Section 3(n) and Section 332(c)(3))
of the Communications Act)
Washington, DC 20037)

Regulatory Treatment of Mobile Services)

Opposition of CommNet Cellular, Inc.

Petition to Deny

94-110
PR File No. 94-SP8

CommNet Cellular, Inc

Daniel P. Dwyer, Executive Vice President
and Chief Financial Officer

5990 Greenwood Plaza Blvd.
Suite 300
Englewood, Colorado 80111

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CommNet Cellular Inc., as managing agent of, and on behalf of: Wyoming 1 - Park Limited Partnership, CMRS licensee in the Wyoming 1(B) - Park RSA; Wyoming 2 - Sheridan Limited Partnership, CMRS licensee in the Wyoming 2(B) - Sheridan RSA; and, Cellular Inc. Network Corporation, CMRS licensee in the Wyoming 3(A) - Lincoln RSA, opposes the petition filed by the Wyoming Public Service Commission for "Authority to Maintain Current Regulation of Rates and Market Entry"¹ based upon the assumption that the Federal Communications Commission ("the Commission") has accepted this petition².

Based upon the Omnibus Budget Reconciliation Act of 1993, states are prohibited from regulating the entry into business or the rates of any commercial mobile radio service ("CMRS"), provided that a state may petition the Commission to continue rate regulation of CMRS, if that state was engaging in rate regulation as of June 1, 1993. The Wyoming Public Service Commission ("WY PSC") petition specifically requests the authority to maintain current regulation of market entry, as well as regulation of rates. In the petition before the Commission, the WY PSC specifically states it currently "reviews and approves the market entry of the wholesale cellular

¹Public Service Commission of Wyoming, State Petition - PR File No. 94-SP8

²Congress has required in the Omnibus Budget Reconciliation Act of 1993 that those states which regulated rates for CMRS as of June 1, 1993, may petition the Federal Communications Commission to continue rate regulation with the provision that states, "*must petition before August 10, 1994.*" (Omnibus Budget Reconciliation Act of 1993). The Wyoming Public Service Commission has failed to meet the statutory deadline for filing of their petition.

service providers as licensed and authorized by the FCC."³ The Congress has not empowered the Commission to consider any regulation of market entry by the states. The authorization sought by the Wyoming PSC to continue regulation of market entry is therefore statutorily prohibited⁴.

With regard to the states petition to continue existing regulation of rates of CMRS providers, certain evidence, information, and analysis is required for the Commission's consideration. The criteria by which the Commission is to determine whether or not the continuance of rate regulation is warranted include: " (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such state."⁵ The petition submitted by the WY PSC does not directly address either of these issues by providing the Commission with specific examples of market conditions which would indicate that either of the above-mentioned market conditions exists to any extent which would justify rate regulation at the state level. The market information provided by the WY PSC is not specific in addressing the existence of market disparities as specifically required by statute.

The WY PSC has not provided information to the Commission to support any continuance of rate regulation, and in fact does not indicate whether or not the WY PSC is currently regulating rates of all CMRS providers.

The WY PSC does provide some information regarding the numbers of CMRS providers and subscribers, as well as some state tariff filing information; however, the WY PSC does not draw any specific conclusion that the CMRS providers are in any way unreasonable, unjust or discriminatory, or that past performance by such carriers within the market indicates a tendency towards such practices. The WY PSC has not provided any information regarding the services offered to subscribers by these CMRS providers or their duration of operation, which information is necessary in order to determine whether or not subscriber choices within the market are adequate. No conclusion that state regulation is of any benefit to subscribers in the market can be drawn from the information provided by the WY PSC.

The WY PSC petition specifically addresses its regulation of one CMRS provider in particular, Union Telephone Company. In its capacity as a wire-line cellular provider, Union Telephone Company is using cellular technology for the provision of "standard telephone service" in those remote areas where this utility has not been

³Public Service Commission of Wyoming, State Petition - PR File No. 94-SP8

⁴See Federal Communications Commission Public Notice, DA94-764, dated July 8, 1994

⁵47 U.S.C. Section 332 (c) (3) (A)

able to provide land-line service to its customers. The WY PSC regulation, while dealing with the technology utilized by CMRS providers, appears to be applied to Union Telephone Company as it operates within its public utility capacity. While the WY PSC does provide documentation related to the specific regulation of these services provided by Union Telephone Company, the regulation is not addressed in any other context, or with respect to any other CMRS providers.

Information regarding rates of some CMRS providers is included in the WY PSC's petition; however, as with other documentation enclosed in the petition, no interpretation is provided as to how any of this documentation supports the request for continued regulation. The Commission specifically requested that rate information for some reasonable period be given in order to show trends in rates. Contrary to the request for evidence, no information regarding trends in the rates of CMRS providers within the state have been provided.

In requesting the continuation of rate regulation, the states "must identify and describe in detail the rules the state proposes to establish if the petition is granted."⁶ No specific information explaining to the Commission how the WY PSC intends to regulate the rates of CMRS providers within the state is included in the petition. The lack of specificity is of particular concern since the burden of proof is on the state to substantiate that such regulation is in the public interest. There is no indication by the WY PSC as to what will be required to ensure "regulated competition" and no detailed information regarding specific rate regulation is given. Since the state petition has failed to describe any of the regulations it intends to impose on CMRS providers, it seems impossible for the Commission to determine whether or not the congressional objective "to ensure that an appropriate level of regulation be established and administered to CMRS providers"⁷ will be met by allowing the WY PSC to regulate rates.

The information in the WY PSC petition to continue rate regulation does not support or justify grant of the petition. The blatant absence of supporting evidence leaves no question that proper evaluation of the existing CMRS market conditions in the state of Wyoming cannot be achieved through the review of the WY PSC's petition. Based upon the lack of requested supporting evidence, and the lack of detailed identification and description of rules the state will establish, CommNet Cellular Inc. respectfully requests the Commission deny the petition.

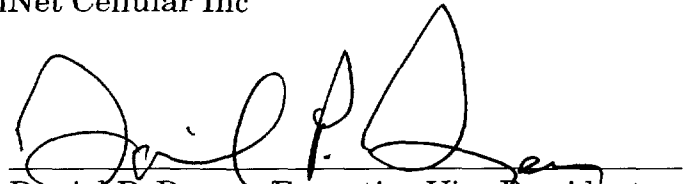
⁶FCC Public Notice, DA94-764, dated July 8, 1994, FCC Announces Procedures Governing State Petitions for Authority to Regulate Commercial Mobile Radio Service Rates

⁷Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd., 1418

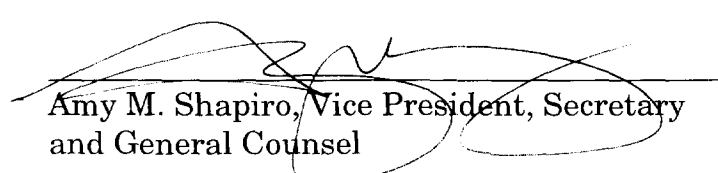
Dated September 16, 1994

Respectfully submitted,

CommNet Cellular Inc



Daniel P. Dwyer, Executive Vice President
and Chief Financial Officer



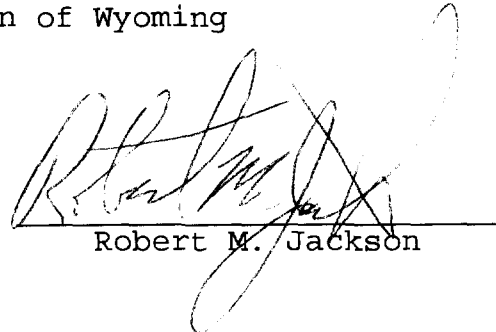
Amy M. Shapiro, Vice President, Secretary
and General Counsel

Filed: September 19, 1994

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Jackson & Dickens and that on this 19th day of September, 1994, I caused a copy of the foregoing OPPOSITION OF COMMNET CELLULAR INC. PETITION DENY to to be delivered by overnight courier service to the following:

Douglas J. Moench, Esquire
Public Service Commission of Wyoming
700 West 21st Street
Cheyenne, Wyoming 82002



Robert M. Jackson